



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ENVIRONMENTAL
CLEANUP

JAN 04 2016

Mr. Bob Wyatt
Chairman, Lower Willamette Group
c/o Northwest Natural
220 Northwest Second Avenue
Portland, Oregon 97209

Re: Portland Harbor Superfund Site, Administrative Order on Consent for Remedial Investigation and Feasibility Study; Docket No. CERCLA-10-2001-0240; EPA Decision to Complete the Portland Harbor Superfund Site Feasibility Study

Dear Mr. Wyatt:

I am writing to inform you that the U.S. Environmental Protection Agency will finalize the Feasibility Study for the Portland Harbor Superfund Site and not require or direct the Lower Willamette Group to incorporate our modifications and produce the draft final Feasibility Study. By letter dated, December 18, 2012, the EPA notified the LWG that we did not approve its March 2012 draft FS, and listed key deficiencies. After the disapproval notice, we agreed to coordinate our proposed modifications section by section with the LWG, as documented in the Portland Harbor Superfund Site Revision Process for Feasibility Study, modified December 15, 2014. In accordance with the agreed process, the EPA shared Sections 1 and 2 on July 8, 2014, and February 23, 2015, and the LWG and EPA discussed the LWG's comments on those sections. We provided Section 3 on July 29, 2015 and Section 4 on August 7, 2015. Since release of those sections, the LWG has met to talk through the Decision Trees on November 2, 2015, and December 3, 2015, and the LWG has provided extensive comments on those sections. The EPA is considering the LWG's comments and will make appropriate changes in the revised final FS. The LWG provided the National Remedy Review Board and Contaminated Sediments Technical Advisory Group (NRRB and CSTAG) with comments and concerns on the FS and direction of the cleanup for Portland Harbor. The Region is also considering those comments in revising the FS.

To keep the remedy selection process moving forward and publish a Proposed Plan by March 2016, the EPA decided to complete the Feasibility Study rather than direct the LWG to incorporate our changes and produce the report. EPA can complete the work otherwise required of the LWG under the Administrative Settlement Agreement and Order on Consent (AOC) because the 2012 draft FS was disapproved as deficient. See Section IX, Paragraph 1 and Section XIX, Paragraph 9. Furthermore, EPA can more effectively and efficiently incorporate changes to the FS to address stakeholder comments, the NRRB and CSTAG recommendations, and any issues raised during government to government consultations with Tribal governments.

Given the EPA's decision, we expect the LWG has questions about the status of its remaining work under the AOC, and dispute resolution rights. Work remains to be done under the AOC. The LWG must finalize the Remedial Investigation Report (RI).

The EPA will soon provide its last comments on the RI and request the LWG to incorporate our last changes. We too may seek the LWG's assistance in providing information for the administrative record. Additionally, until we seek public comment and finalize the Administrative Record, the EPA will not know that we have "all appropriate necessary information for the RI/FS for a CERCLA Record of Decision." See Section IV, Paragraph 2. If new information is raised by public comments that EPA decides requires supplemental RI or FS work, we may ask the LWG to conduct that work. Although the EPA doesn't expect this to happen, the AOC will remain open and effective in order to cover that possibility. See generally, Section XXXVIII, Termination and Satisfaction. Additionally, not all of EPA's response costs have been billed and reimbursed under the AOC.

Regarding dispute resolution, the EPA notified the LWG in December 2012 that it disapproved the LWG's 2012 draft and would be modifying it. The opportunity to dispute EPA's disapproval of the 2012 draft has technically passed; however, given EPA is now deciding to finalize the FS rather than simply modify it, the EPA believes it is reasonable that, in accordance with Section XIX of the AOC, the LWG have the opportunity, if it chooses, to dispute EPA's decision to disapprove the LWG's 2012 draft. Additionally, the dispute resolution provision arguably does not apply to the EPA's FS modifications because we are not requiring the LWG to incorporate them and produce the FS. See Section XIX, Paragraph 1, and Section XVIII, Paragraph 1. However, we will provide the LWG an opportunity to raise a dispute on the August 2015 modified FS so we can consider the LWG's issues in producing the final FS.

Therefore, in accordance with Section XIX, Paragraph 1, within 14 days of receipt of this notice, the LWG may, if it chooses, invoke dispute resolution on: (1) EPA's disapproval of its 2012 draft FS; and/or (2) EPA's August 2015 modified FS by notifying the EPA Project Manager, Kristine Koch, in writing of their objections. The LWG's written objections shall define the dispute, and state the basis of its objections. For an additional 14 days, the EPA and the LWG have an opportunity to resolve the disputed issues. If the LWG's disputed issues are not resolved within the 14-day informal resolution timeframe, the LWG may request a final determination by the EPA.

The EPA hopes the LWG is as pleased as we are that the project is close to the remedy selection phase and is moving toward actual cleanup after 15 years. The EPA understands that there are a number of issues raised in this letter. We would be happy to discuss any questions you have about our decision. Please contact Debbie Robinson at (206) 553-4961 or Robinson.Deborah@epa.gov to set up a meeting or conference call.

Sincerely,



Cami Grandinetti
Program Manager
Remedial Cleanup Program